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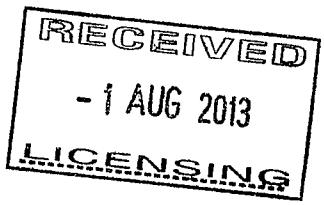
Our ref: JHL/44451.13
Date: 31 July 2013



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Dear Ms Boyle

Review of Hackney Carriage Vehicle Policy

We act for Allied Vehicles Ltd ('Allied')

Allied is the UK's largest supplier both of taxis for public use and of wheelchair accessible vehicles for private and community use. Allied is a progressive company, constantly seeking to evolve new products to meet the needs of vehicle operators and end users. Its E7 taxi is manufactured in stages: the base vehicle is produced by Peugeot in France; Peugeot uses that base to produce various commercially available vehicles and also sells it to Allied for adaptation for use as a hackney carriage. The E7 taxi carries EC Whole Vehicle Type Approval and is the most popular hackney cab in the UK outside London, including the TX4 and Mercedes One80 Vito. Allied has recently added further accessibility innovations to the E7 such as a rear swivel seat.

Given this, Allied has a direct interest in the outcome of the ongoing review of Trafford Council ('the Council')'s Hackney Carriage Vehicle Policy ('the Policy').

The background to the Policy review is as follows.

As you will know, every few years undertakes a survey to identify if there is any further demand for hackney carriages in the area. The most recent took place in April-May 2013. The results have been published on the Council's website in an answer to a Freedom of Information Act 2000 request made by Mary Carr. On 19 March 2013 they were also reported to the Public Protection Sub Committee ('the Sub Committee') in an

officer's report. It recommended that numbers of licenses be maintained pending a review of the Council's current Policy.

It appears that the Policy was last reviewed on 16 October 2008 by the Sub Committee. A decision was made to maintain it in its current form with one variation allowing One80 Vito taxis to be licensed locally. There was also a commitment made:

> "that the Council's policy be reviewed in two years time, or earlier if there is a change in the law or Government policy."

That promised review did not occur, however.

More positively, the Council's licensing team met with representatives of Allied at a recent taxi exhibition in Manchester and indicated that the belated Policy review was now underway. That was welcome news. We would be grateful for confirmation of the timetable for the review and the planned steps.

As you will know, the review is very timely for seven reasons:

1. The E7 is now licensed as a Hackney carriage by every UK authority, save for Trafford and five others which have policies based on the London Conditions of Fitness which the E7 does not fully meet. As there are 374 licensing authorities in the UK, it follows that 98% of authorities have conditions that allow the E7 to be licensed.

2. Manchester City Council began licensing E7s as Hackney carriages some months ago on an interim basis, pending completion of its review. These licensed E7s regularly travel in and out of Trafford, as might be expected given the geography of the area. Licensed E7s from all other authorities that border Trafford do so too. Yesterday Manchester decided to change its own policy conditions so that E7s could be licensed on an ongoing basis.

3. There have been no safety concerns associated with the E7 taxi being used as a Hackney carriage in Trafford as a result of it being licensed in neighbouring authorities. Nor have there been any such issues related to its use within Manchester or in any other UK licensing authority. There is also no current licensing condition in Trafford's Policy necessary to protect the health and safety of passengers, drivers or pedestrians which the E7 does not meet.

4. Licensing policies identical to Trafford's have been subject to legal challenge in a number of cases since 2008. We have represented Allied on each occasion. In most, the licensing authorities involved have changed their policies on receipt of legal advice. In one, involving Norwich City Council, the policy was changed after permission for judicial review was granted in favour of Allied. In another, the authority, Liverpool City Council, fought the case to trial where it lost on all three issues:

EU law obligations; Disability Discrimination Act 1995 reasonable adjustment duty; and public sector equality duty. That case, *R (Lunt and Allied Vehicles Ltd) v Liverpool City Council* [2009] EWHC 2356 (Admin) (*'Lunt'*), is discussed further below.

5. Since *Lunt*, the Equality Act 2010 has come into force, strengthening the duty to make reasonable adjustments and extending the circumstances in which it will be triggered.

6. The manufacturer of TX model taxis, LTC, has had severe commercial difficulties and went into administration last October. The company has since been acquired by Geely Automotive of China, where TX4s are now mostly to be manufactured. The company also faces further problems as there is an ongoing multi party claim, *Sneddon and others v Bank of Scotland and others* HQ11X00962, regarding a serious TX4 engine defect. The manufacturer and supplier of parts for the vehicles that make up the bulk of Trafford's current Hackney fleet therefore has a future that is less than certain.

7. Were manufacture of LTC vehicles or parts supply permanently halted, the manufacturer of the only other vehicle that is currently licensed, the One80 Vito, would enjoy a complete monopoly in Trafford. That risk should trouble the Council as monopolies do not tend to serve consumer interests well. Further, it is a fact that the Vito is the most expensive vehicle currently licensed as a Hackney cab by authorities around the UK: a new Vito costs £42,000; TX4s cost upwards of £32,000; the E7 costs from £25,500.

Individually and cumulatively these are plainly good reasons for changing the Policy for the benefit of residents of and visitor to Trafford. They have all have arisen since it was last reviewed in 2008. Point 5 involves a "change in the law", one of the specific triggers for a review of the Policy identified in 2008.

We have been instructed to advise Allied on the legality of the Policy as it stands and what should happen to individual applications to license Allied's E7 taxis as Hackney carriages for use in Trafford pending the Review's outcome. Allied would very much like to be able to respond positively now to the enquiries it is receiving from Hackney taxi drivers and operators in Trafford who would like to replace their existing vehicles with licensed E7s.

The gist of our advice to Allied is that:

1. the effect of the current Policy is to unlawfully exclude the E7 as a vehicle that can be licensed as a Hackney Carriage in Trafford in breach of EU law;

2. the Council is currently in breach of its duties under sections 20 and 149 of Equality Act 2010; and

3. pending the completion of the review, it would be unlawful for the Council to refuse to consider individual applications to license E7 taxis as hackney carriages in Trafford on their merits.

We shall elaborate below. Allied has some further suggestions to make on the right approach to the review, in particular what is, and what is not, relevant.

Allied has asked us to write now so that you can share our advice with the Council's own solicitors, your colleagues with specific responsibility for equality and diversity matters and, most importantly, members of the Sub Committee. Please confirm when acknowledging receipt of this letter that it will be forwarded to all of these groups of people imminently.

We should stress at the outset that Allied does not want to confront the Council in an adversarial way, less still take legal action against it. That is not the purpose of this letter. Allied simply wants to ensure that the promised (and necessary review) of the Policy will now proceed to a lawful conclusion as quickly as practicable, that it is focussed and that the Council exercises its discretion appropriately and lawfully in the meantime.

The legal framework

Discretion

The officers' report for the 2008 decision summarises the legal framework for hackney carriage licensing decisions in this way:

> "6. Appearance/Recognition/Identification of vehicles
>
> 6.1 Section 47 of the Local Government (Miscellaneous Provisions) Act 1976 states the following:
>
> > 'A district council may attach to the grant of a licence of a hackney carriage under the Town Police Clauses Act 1847 such conditions as the district council may consider reasonably necessary.
> >
> > Without prejudice to the generality of the foregoing subsection, a district council may require any hackney carriage licensed by them under the Act of 1847 to be of such a design or appearance or bear such distinguishing marks as shall clearly identify it as a hackney carriage.'
>
> The above section is modified by section 48 of the Act which provides that where it grants a licence for a private hire vehicle it must be satisfied that the vehicle is not of a design and appearance as to lead any person to believe that the vehicle is a hackney cab."

The "Act of 1847" is the Town and Police Clauses Act of that year, which defines "hackney carriage" at section 38:

> "Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street within the prescribed distance, and every carriage standing upon any street within the prescribed distance, having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act."

to which section 37 of the 1847 Act adds:

> "The commissioners may from time to time licence to ply for hire within the prescribed distance, or if no distance is prescribed, within five miles from the General Post Office of the city, town, or place to which the special Act refers, (which in that case shall be deemed the prescribed distance,) such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit."

Licensing authorities therefore enjoy two forms of discretion in this field.

The first is the section 47 discretion to set conditions relating to vehicles licensed as hackney carriages locally by means of a policy or on a case by case basis.

The second is the other side of that coin. It is the discretion to make exceptions to any policy containing such conditions: as the authority "may attach to the grant of a licence of a hackney carriage... such conditions" (emphasis added), so it can equally decide not to do so in an individual case. It would not be legally permissible for the Council to fetter that discretion by refusing to consider exceptions on a case by case basis.

The primary difficulty with the 2008 report is that it suggests the Council may exercise its discretion however it might wish. That is not the case: the discretion is constrained by EU and equality law.

EU law constraints on discretion

The first of the three issues in *Lunt* was the extent to which EU law constrains licensing authorities' discretion.

In his judgement (which we append) Blake J held first that, as the base vehicle for the E7 is manufactured outside the UK, a Hackney carriage licensing policy which means it could not be licensed in a particular part of the UK (e.g. Liverpool or, for that matter, Trafford) would unlawfully

breach Article 28 of the EU Treaty (now Article 34 of the Treaty on the Functioning of the European Union ('the Treaty')) unless justified as a means of protecting the "health and life of humans" on the basis of clear evidence. That was because such a licensing policy operates as a quantitative restriction on imports or a measure of like effect.

Obstacles to the free movement of goods which are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, including rules that lay down requirements to be met by such goods (such as those relating to designation, form, size, weight, composition, presentation, labelling, packaging) are prohibited by Article 34. The only relevant exception is where they can be justified as a proportionate means of meeting a legitimate public interest aim (see Case 120/78 *Rewe-Zentral (Cassis de Dijon)* [1979] ECR 649) such as protection of the health and safety of people under Article 35. These points are made by Lord Bingham *in R (Countryside Alliance) v Attorney General* [2008] 1 AC 719 at [27]-[28] and are emphasised in more recent judgments of the ECJ referred to in the *Lunt* case, in particular Case C-142/05 *Åklagaron v Mickelsson and Roos* [2009] ECR I-4273 and Case C-110/05 *Commission v Italy* [2009] ECR I-519.

In Liverpool, Blake J went on to hold, there was no such justification.

It did not matter that the Liverpool market for the E7 was only a part of the UK-wide market. The position is clearly stated in the EU Commission's Guide to the application of Treaty provisions governing the free movement of goods, which was referred to by the High Court in the *Lunt* judgment. In particular, that document states (at §3.1.6) that:

> "There is no *de minimis* principle in relation to the articles concerning the free movement of goods. According to long-established case-law, a national measure does not fall outside the scope of the prohibition in Articles 34-35 TFEU merely because the hindrance which it creates is slight and because it is possible for products to be marketed in other ways (See Joined Cases 177/82 and 178/82 *Van de Haar* [1984] ECR 1797; Case 269/83 *Commission v France* [1985] ECR 837; Case 103/84 *Commission v Italy* [1986] ECR 1759.).
>
> Therefore a state measure can constitute a prohibited measure having equivalent effect even if:
>
> - it is of relatively minor economic significance;
> - it is only applicable on a very limited geographical part of the national territory (Case C-67/97 Bluhme [1998] ECR I-8033);
> - it only affects a limited number of imports/exports or a limited number of economic operators."

The reasonable adjustment duty

Turning to the equality law issues in *Lunt*, Blake J found that, properly understood in this context, the duty under section 21E Disability Discrimination Act 1995 (see now section 20 of the 2010 Act):

> "seeks broadly to put the disabled person as far as reasonably practicable in a similar position to the ambulant user of a taxi"

and, however useful a narrow turning circle might be, it was no justification for not discharging that duty so as to bring about real equality by means of reasonable adjustments to licensing policy.

In setting out the legal principles to be applied to determining whether a Hackney Carriage licensing policy could be justified under 21E, Mr Justice Blake adopted a 'six step approach' as follows:

> "1. Did the [authority] have a practice policy or procedure?
>
> 2. Did that practice, policy or procedure make it impossible or unreasonably difficult for disabled persons to receive any benefit that is, or may be, conferred by the [authority]?
>
> 3. If so, is it under a duty to take such steps as is reasonable in all the circumstances of the case for it to change that practice policy and procedure so it no longer has that effect?
>
> 4. Has the [authority] failed to comply with its duty to take such steps?
>
> 5. If so, is the effect of that failure such as to make it unreasonably difficult for [a disabled person] to access such benefit?
>
> 6. If so, can the [authority] show that its failure to comply is justified in that either-
>
> a. it reasonably holds an opinion that the non-compliance is necessary in order not to endanger the health or safety of any other person; or
>
> b. its failure is justified as a proportionate means of achieving another legitimate aim?"

Identical principles now apply under section 20 of the 2010 Act, save that step 5 is now concerned about the practice, policy or procedure placing the disabled person at "a substantial disadvantage" rather than making it "unreasonably difficult" and step 6 is gone. The position now is that reasonable steps to "avoid" the disadvantage must be taken when the duty is engaged unless an exception applies. Liverpool attempted to argue that various exceptions applied in *Lunt* but all but abandoned these arguments at the hearing.

Understanding the correct factual position and its impact

Thirdly, Blake J held that Liverpool City Council's assumption that a fleet consisting of vehicles that complied with the London conditions of fitness was "accessible" to wheelchair users was a "fundamental error of fact", for in reality the evidence:

> "showed serious difficulties for a class of wheelchair users that was wider in extent than Mrs Lunt personally, and that of that class there

> are some, like Mrs Lunt, who could not access the safe and secure position at all."

These difficulties came about because there was insufficient space within the taxis that comprised Liverpool's fleet to turn and secure larger wheelchairs, such as that used by Mrs Lunt, that are becoming increasingly common.

Liverpool's incorrect assumption that it's fleet was nevertheless "accessible" meant it could not discharge its duty have "due regard" to the needs to eliminate discrimination and to promote disabled people's equality and participation in public life as required by section 49A of the Disability Discrimination Act 1995 (see now section 149 of the Equality Act 2010).

It is important that you and your colleagues appreciate that this evidence was not limited to that provided by Mrs Lunt as to her own experience (otherwise Blake J could not have made findings about the effects of the policy on "a class" of wheelchair users). It included material such as the Lowland Report (also appended to this letter). It has since been reinforced by the data from the CEDS Study of Occupied Wheelchairs for the DfT (also appended). We return to this point below.

The legal position summarized

Drawing these strands together, following *Lunt* licensing authorities:

1. may adopt, maintain and apply rational licensing conditions for Hackney Carriages under the 1976 Act having regard to local conditions and user interests, but disregarding irrelevant considerations;

but:

2. they have no discretion to adopt, maintain or apply conditions which exclude the E7, such as the current London Conditions or Fitness, unless there is an evidence-based justification for doing so for the purposes of protecting the health and life of humans which meets the strict EU law standards now contained in Article 36 of the Treaty;

3. nor can they lawfully adopt, maintain or apply conditions which put a class of disabled people (such as the users of larger wheelchairs like Mrs Lunt) at a substantial disadvantage, when using Hackney Carriages from their fleet unless they take reasonable steps to avoid the disadvantage;

and:

4. authorities that fail to properly appreciate the effects of adopting or, on an ongoing basis, maintaining or applying a policy that would, or even potentially could, have the unlawful effects

described at point 3 above, or otherwise have implications for the promotion of disabled person's equality, will be in breach section 149 of the 2010 Act.

These consequences were explained to Liverpool by its own Counsel in legal advice that was appended to its officers' report for the Licensing Committee meeting held to discuss what should be done in the wake of the *Lunt* judgment. They also were at the heart of published legal advice given by Manchester City Council's officers to its own Members when they recently reviewed that authority's policy.

Liverpool proceeded to amend its policy to allow the E7 to be licensed, as it was bound to do. Unsurprisingly, Manchester recently now followed suit as did Peterborough earlier this week, following the outcome of its own review.

The position in Trafford

We now turn to Trafford's Policy.

Explanation given

We note that the 2008 Officers report offers only this by way of explanation for the Policy:

> "7. **Enforcement and local considerations**
>
> 7.1 The differentiation between hackney carriage type and private hire vehicles is presently clear for both the public and the Council's Enforcement Officers. Should the present restriction be abandoned the difference between hackney carriage and private hire vehicles could be subject to a degree of confusion. The London style taxi also has international recognition that gives assurance when hiring vehicles in the street.
>
> 7.2 In addition, Trafford has for many years followed a similar approach to Manchester in view of the transport and community corridors, in particular around the major sporting venues. Manchester City Council's current policy is to only licence purpose built public hire vehicles, namely: London International, TX1 Bronze, TX2 Silver, Metrocabs and Fairways. This is more restrictive than Trafford's requirement to satisfy PCO conditions. Manchester will be considering a report later this month on whether to also licence the new Mercedes Vito.
>
> 7.3 Trafford, Salford and Tameside restrict hackney carriages to the PCO requirements, the other authorities bordering Manchester do not. However, none of these other authorities bordering Manchester have international cricket and football stadium, or a regional shopping centre."

No equality impact assessment or any other documentation showing thought had been had to the matters then made relevant by section 49A of the Disability Discrimination Act 1995 (the predecessor to section 149

of the Equality Act 2010) was before, or produced by, the Sub Committee. Both these duties were in force, but they simply did not feature in the decision making process.

Operation of a policy that is incompatible with EU law

A further difficulty with the 2008 review, as noted above, was that officers apparently did not appreciate the relevance of EU law to members' decision making.

As noted above, the E7 is licensed by almost every other UK licensing authority, none of which have identified safety or other significant concerns. Recognition difficulties simply do not arise because authorities simply stipulate livery and signage conditions which the E7 can easily meet. Further, to our own and Allied's knowledge, no health or safety concerns have ever been raised about the E7 being used in Trafford. Needless to say, the fact that "none of [the] other authorities bordering Manchester have international cricket and football stadium, or a regional shopping centre" has nothing to do with health and safety.

If there are any heath or safety concerns, please set them out in your response to this letter and enclose copies of any supporting evidence on which they are based. If there are none, please confirm that is the position.

At present, however, there is no Article 35 justification for the restriction that Article 34 prohibits, less still an evidence-based one that would suffice in EU law. Maintaining the current policy with the effect that the E7 cannot be licensed in Trafford therefore breaches EU law on an ongoing basis. The position is identical to that in Liverpool.

Operation of a policy in breach of the Equality Act 2010 reasonable adjustments and due regard duties

The *Lunt* approach to the reasonable adjustments duty is also directly applicable in Trafford. The Council has its Policy. It plainly creates difficulties for a class of wheelchair users: see e.g. the comments in response to the 2008 consultation from Brian Hilton of the Greater Manchester Coalition of Disabled People and the Trafford Disability Partnership Board. That class will run to many hundreds of visitors and residents, possibly 1000s.

Taking residents alone, the NHS estimates that there are 1.2 million wheelchair users resident in the UK i.e. 2.3% of the general population (http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103389).

Department for Transport research has also been undertaken into the dimensions of occupied wheelchairs in the UK which we append. Combining this data indicates that 58.2% of wheelchair users nationally use wheelchairs with a length of between 1,000mm and 1,200mm, i.e. c.

700,000 people; and 15.3% of wheelchair users nationally use wheelchairs that are larger still, with a length of 1200mm or more, i.e. c. 184,000 people.

Applying this data indicates that, of Trafford's population of c. 226,600, around 5219 residents are likely to be wheelchair users. Around 3,033 of them will be users of larger wheelchairs and about 798 will be users of particularly large wheelchairs

The extent of the impact will depend on wheelchair size. There are two groups of wheelchair users to consider in particular.

First, there are those for whom safe travel in many current fleet taxis is impossible, as it was for Mrs Lunt before she brought her challenge to Liverpool's licensing policy and, secondly, those for whom it is unreasonably difficult, given the size of their wheelchairs.

The direct effects for those who cannot be turned and secured at all (generally those with larger wheelchairs, but also those with unusual features to accommodate particular impairments) include:

1. having to make an invidious choice of travelling unsafely, unsecured in a sideways facing or angled position or not at all (a choice no other taxi or car users are forced to make (sideways-facing seats are banned under EU law in the class of passenger vehicles that include taxis: see Directive 2005/39/EC amending Directive 74/408/EEC relating to motor vehicles' seats, anchorages and head restraints, and under regulation 5 of the Motor Vehicles (Wearing of Seat Belts) Regulations 1993, as amended, every person riding in a front or rear seat of a motor vehicle must wear a seat belt where one is available);

2. exposure to the risk, and the fear, of serious injury and possibly even fatal injuries in extreme cases (Mrs Lunt and a fellow disability rights campaigner, Jean Price, gave examples to the Court in their evidence in the Lunt case and a fatality occurred in Birmingham in the tragic case of Ramzan Begum, see: http://democracy.york.gov.uk/mgConvert2PDF.aspx?ID=37524);

3. acute discomfort, including that caused by having to hold on during a journey; and

4. undermining of the dignity of wheelchair-using passengers forced to travel in this manner because of their disability, when others are not.

Secondly, there are those with wheelchairs that can be turned and secured, but only with difficulty. Their lack of a choice of a more accessible vehicle means:

5. discomfort and inconvenience as the wheelchair is being turned into a rearward facing position (often involving the chair being

tipped up on two wheels and/or forcibly shoved sideways - see the appended See the HSE report on loading and unloading of wheelchairs in taxis); and

6. an undermining of dignity (for example, drivers will often have to stoop to get the necessary leverage to turn the chair and manoeuvre it into position, during which time they will be at the waist level of the passenger; something which the witness Mrs Price explained in the *Lunt* case was humiliating for her and necessitated her wearing trousers).

There are also clear indirect effects for both groups:

7. when a wheelchair cannot easily be accommodated in a taxi, or is forced into a sideways facing or angled position because of the vehicle's dimensions, the wheelchair user is unlikely to be able to travel with more than one companion - a clear disadvantage which no non-wheelchair using passenger will experience;

8. some drivers are further dis-incentivised from picking up wheelchair users when hailed in the street - a practice which, although directly discriminatory and thus unlawful, is exceptionally difficult to challenge (Allied knows of no case being brought, less still succeeding); and

9. tension can arise between drivers and wheelchair using passengers over questions of how they should be secured and, if they can, the best means to achieve that. Drivers may be concerned, for example, that declining to carry a wheelchair passenger or carrying a wheelchair passenger in an unsafe manner may put them in breach of the conditions of their licence - yet the dimensions of their vehicle may make it impossible for them to do so safely.

These effects are clear from Lowland Market Research's 2008 'Wheelchair User Experience Taxi Survey which was reviewed by the Court in the *Lunt* case (it too is appended to this letter). The survey found that in 96% of journeys in taxis in Manchester and London, the wheelchair user (of a "reference-sized" wheelchair, which is smaller than the average size) was not properly secured for travel.

It cannot sensibly be suggested that the effects do not amount to a substantial disadvantage for section 20 purposes.

The duty to make reasonable adjustments therefore applies, just as it did in Liverpool. No such adjustments have been made in Trafford, however.

Moreover, section 149 of that Act obliges the Council to grapple with this conscientiously because there can be no "due regard" to the effects on disabled people either unless the legal and factual position is properly understood. We also consider the response to the Freedom of

Information Act 2000 request mentioned above is significant in this regard. It says:

> "What are your accessibility requirements for hackney carriage vehicles?
>
> - *Trafford Council only license London Style Hackney Carriages (LTI TX2 & TX4) which are all wheelchair accessible.*
>
> Do you inspect the taxis and wheelchair accessible vehicles for Accessibility?
>
> - *No."*

The Council was simply wrong about its current Hackney carriage fleet vehicles being "all wheelchair accessible", an error which has presumably come about because it does not actually inspect taxis for accessibility. "London Style Hackney Carriages (LTI TX2 & TX4)" are no more wheelchair accessible in Trafford as they were in Liverpool at the time of the *Lunt* case; 'accessibility' depends on the wheelchair.

Trafford has made precisely the same fundamental error of fact as Liverpool did.

The interim position pending completion of the review

None of this is new. Despite the Council making a commitment to review the Policy in 2010 and being prompted to reconsider it following *Lunt* by Allied and, we understand, The Equalities and Human Rights Commission, that reconsideration has yet to be completed.

As noted above, the review is now taking place. But this still presents a difficulty for the Council because, if it were to maintain the existing policy rigidly in the meantime, the E7 would remain excluded from the local market until the review is completed.

That would be unlawful for the reasons we have explained above. It would also be a fettering of the Council's discretion. The fact of the review would preclude any consideration of the E7 on its merits, taking into account the effects of *Lunt*. That would not be lawful either.

There is, however, a straightforward and practical solution which we suggest officers urgently recommend to the Sub Committee. It is for the Sub Committee to agree to authorise you and your colleagues to consider individual applications to license the E7 on their merits, with appropriate legal advice. It may either wish to consider your recommendations on each such application, or authorise you to determine them.

This would mean the Council could avoid breaching EU law or fettering its discretion in relation to individual applications. It would not address the legality of the policy generally or its effects for disabled people, but

the most immediate and pressing difficulty of the policy's application would be eased.

As you may know, Manchester's officers considered a similar proposal and decided, on legal advice, to recommend it to that authority's licensing committee which accepted it. Interim arrangements were implemented pending Manchester's review and they worked well for everyone.

We would be grateful if you could ensure that this proposal is put before and discussed at the next Sub Committee meeting and for your response to it shortly afterwards. We accept, of course, that it would be for the Sub Committee to decide whether to make an exception to the current policy in this way. If you are unwilling to put the proposal to the Sub Committee, please explain why in your response to this letter.

Framework for progressing the review

Last, Allied has some suggestions to make as to how best to progress the review at a general level.

Allied suggests the following 'core principles' are adopted:

1. all regulation must be shown to be justified in the public interest, not in the interests of taxi operators or vehicle manufacturers;

2. regulation must be proportionate and compatible with EU law;

3. there should be a strong presumption in favour of competition and consumer choice, manifested in a range of vehicles being available for hackney carriage users; and

4. restrictions on the licensing of vehicles which, were they licensed, would result in improved accessibility for people with particular disabilities should be critically examined by means of an equality impact assessment and only maintained if justified under the strict standards imposed by the Equality Act 2010.

The last two of these points are especially important because there is powerful, objective evidence that restrictions on the range of vehicles licensed as Hackney Carriages have a particularly acute impact on disabled people. For example, the OFT 2003 market study into the taxi and PHV sector in the UK concluded at paragraph 7.38:

> "As disabled people have a range of different requirements, it is important that there is a range of taxi vehicles that are able to meet their varied needs".

The value of positively promoting a range of taxi and private hire vehicles is underscored in the Department of Transport's Best Practice Guidance on Taxi and Private Hire Vehicle Licensing, the 2010 edition of which states:

> "27. Normally, the best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible. Indeed, local authorities might usefully set down a range of general criteria, leaving it open to the taxi and PHV trades to put forward vehicles of their own choice which can be shown to meet those criteria. In that way there can be flexibility for new vehicle types to be readily taken into account.
>
> 28. It is suggested that local licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle or prescribes only one type or a small number of types of vehicle."

This principle is also acknowledged in the Law Commission's recent consultation report at paragraph 11.13:

> "It is generally recognised that it would be impossible to design a vehicle suited to the needs of all disabled people given the wide and disparate variety of needs present within the disabled community. It is perhaps more important to consider the range of vehicles available in an area, in order that disabled passengers can exercise choice over how they travel."

The point is, in a sense, an obvious one. However, a comparison of the different internal measurements of the leading wheelchair accessible taxis, carried out by STATUS using PAS 2012 methodology, demonstrates that it is only by having a range of taxis that a licensing authority can ensure that vehicles are available to accommodate a range of wheelchair users, depending on the width, length or height of their particular wheelchair.

Concluding remarks

We hope the information in this letter will be of some assistance.

Please confirm receipt by return.

We look forward to hearing from you on the requests above. In summary, we seek:

1. confirmation of the steps the Council will be taking in the course of the review and its timetable;

2. confirmation that this letter will be shared with the Council's own solicitors, your colleagues with specific responsibility for equality and diversity matters and, most importantly, members of the Sub Committee

3. an indication of whether there are any known health or safety concerns about licensing the E7 for use as a Hackney taxi; and

4. confirmation that the interim position proposal will be put to the Sub Committee.

We would like a substantive response on these matters within 14 days, please.

Yours faithfully

Bindmans LLP

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